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CAN FAIR USE BE ADEQUATELY TAUGHT TO  
LIBRARIANS? ASSESSING LIBRARIANS' CONFIDENCE  
AND COMPREHENSION IN EXPLAINING FAIR USE  
FOLLOWING AN EXPERT WORKSHOP

BY

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THESIS

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## ABSTRACT

Fair use is often viewed as a topic too difficult for librarians and library staff to engage with and, hence, avoided altogether. However, with the right training, librarians can learn how to employ fair use in their daily work. This study utilized testing both before and after an expert led fair use training session in order to measure both librarian confidence and comprehension of fair use. The results, though limited in scope, provide encouraging evidence that librarians can tackle the concept of fair use when provided with appropriate training. Both the level of confidence and the level of comprehension rose after the librarian participants were provided with training, indicating that the training did indeed have impact. Further evidence of impact was evidenced by the survey distributed two weeks after the training wherein some librarians noted that they had had the opportunity to utilize the skills learned in the training workshop during their daily work. The results, therefore, are encouraging and hopefully will lead to further training program development and implementation regarding fair use and other copyright issues in libraries.

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## INTRODUCTION

This work, grounded in information literacy and assessment literature, will add to LIS understanding of how effective fair use training sessions can increase confidence and comprehension levels of librarians. This is significant because in a modern library, librarians are faced with fair use questions on a frequent basis. Not only do fair use questions arise from patrons, for which librarians are able to provide access to legal information but not legal advice, but they also arise in the course of a librarian's daily work. For instance, in any given day a reference librarian might receive questions about fair use from library patrons, but that very same librarian might need to make fair use assessments of a library display, a poster created for distribution on campus, a bookmark created by the library for patron use, or the librarian might wish to link to other web pages and utilize images on a library guide that is available online, or engage in digital scholarship or other digital projects. All of these important issues involve questions of fair use and only the one involving direct patron involvement prohibits the librarian from actually making a fair use determination.

If fair use is no longer viewed as a topic that cannot be learned, but rather a subject that is accessible to learners through training, libraries can implement successful fair use training sessions for their own employees and effectively address fair use issues both within the library itself and those posed by library patrons. Indeed, some training programs, including Harvard's Copyright First Responders (Copyright First Responders, 2017), have already been developed to assist librarians tackle fair use and other copyright issues. This study, while limited in scope, provides some evidence that there is a correlation between librarian participation in such training and librarian confidence and comprehension level post-training. The results, therefore, are

encouraging and hopefully will lead to further training program development and implementation regarding fair use and other copyright issues in libraries.

## LITERATURE REVIEW

A brief literature review of LIS research relating to copyright includes articles offering practical legal applications, such as locating heirs of orphan works or descriptions of copyright policies or training sessions and outreach. (Smith, 2015); (Charbonneau & Priehs, 2014); (Duncan et al., 2013). However, in an age where copyright is pervasive in the everyday life of librarians, it is important to assess whether the concept of fair use can be adequately taught to librarians and graduate assistants providing reference services, which would allow them to conduct their day-to-day operations with more confidence and comprehension. Of course, librarians are capable, intelligent individuals, but fair use is generally viewed as a difficult, fluctuating and troublesome area of the law. Thus, this research is aimed at understanding whether a basic training session on fair use can increase the confidence and comprehension level of librarians to apply the concepts to their everyday interactions with patrons.

The most relevant articles to date regarding librarian training on copyright are limited to a national survey (born from an international survey) aimed at discovering whether librarians were receiving copyright training, and a self-assessment report from librarians regarding copyright knowledge, not an assessment of whether training (in some capacity) can increase the confidence of librarians in answering user questions in a given area of copyright law. (Duncan et al., 2013); (Estell & Saunders, 2016). The national survey noted that the respondents of the survey preferred “face-to-face, in person, and hands-on opportunities such as workshops,” which is exactly how the training in this study is designed. (Charbonneau & Priehs, 2014).

The closest study on copyright law and training to the one at hand was published in 2011 by Nancy Sims as part of the ACRL Conference in 2011. In the study, which surveyed a sample of 73 University of Minnesota faculty, instructors, researchers (41), and librarian employees



(32), Sims sought to test three hypotheses about the knowledge of University employees and copyright, including one hypothesis about fair use knowledge. She included measures of self-reported history, knowledge, and training, as well a self-assessed measure of copyright knowledge generally. Most importantly, Sims measured fair use knowledge, in particular, using three situational fair use questions. After reading a fair use scenario (one about textual quotations, one “about incorporating an image on a conference poster” and the third “about posting copies of resources on a course website”), participants were given the option to select one or more of ten possible considerations that the participant deemed relevant to the analysis. If the consideration had any relevance to a fair use factor, it was marked correct. If the participant missed a relevant factor it was marked missed and a participant’s response only counted as a failure if the marked factor was “absolutely not relevant.” (Sims, 2011).

In the fair use context, Sims tested knowledge of library and other faculty members regarding scenarios involving either a textual quotation, a conference slide/poster image use, or course resource (e-reserve) posting. In terms of analyzing the results of the fair use responses, Sims found that “[o]n all three of the fair use questions, respondents managed to identify less than half of the considerations directly related to the statutory fair use factors” and that “[m]ost of the time, library employees slightly outperformed faculty, catching more correct considerations, missing fewer of them.” She also noted that library employees outperformed faculty members in the “transformative use” factors of fair use as well, but that “well less than half library employees were familiar with the criticism/commentary considerations of transformative use.” (Sims, 2011). These results demonstrate that further, and more in depth, study of librarians and fair use is warranted. And, in particular, a more nuanced approach, such

as the approach taken in this study, involving qualitative answers may yield more accurate results, especially regarding knowledge of transformative fair use.

In the legal community, fair use is often discussed as so complicated that it lacks any definition. (Crews, 2001). However, this negative understanding of fair use is harmful to the LIS community because librarians interact with patrons who have fair use questions on a daily basis. Thus, training in fair use is essential and raising the level of confidence and comprehension of librarians for answering fair use questions is crucial.

Despite these negative assumptions, fair use training sessions in libraries do occur and have been documented in LIS literature. (Rodriguez et al. 2014); (Kozumplik & Kreutiger, 2010). What has not been well documented is the outcome, in terms of both learning measurements and level of confidence, on the librarians, of the training session. (Estell & Saunders, 2016). The methodology of the testing in the current study includes both an objective measure (pre- and post-testing) as well as a more subjective measure of confidence levels. The pre- and post- training testing of comprehension is included in the current study to provide greater reliability than a confidence level measurement alone, which can be misleading. (Pajares, 1996); (Bandura, 1997). Some individuals may over-state their confidence level regarding a particular skill while under-performing in a given skillset and the reverse is also possible. (Manoi, O'Hanlon & Diaz, 2005). Thus, the design for this fair use training measurement includes both a confidence level measurement as well as a more objective (comprehension) testing method.

The current information literacy standard governing librarian teaching is the ACRL framework. (ACRL Framework, 2015). The ACRL also encourage assessment through pre and post testing. (ACRL, Teaching & Learning, 2017). Thus, the training provided was guided by

the framework—and more specifically, the “information has value” frame—and included both pre and post testing, along with a control group, to assess the effectiveness of the training.

## **METHODOLOGY**

In this quasi-experiment using nonequivalent control group design, the researcher engaged in a mixed-methods study of user confidence and knowledge both before and after a training session on fair use with a subject expert, Kyle Courtney from Harvard Library, using a portion of the Copyright First Responders curriculum. The subjects of the study were both reference librarians and graduate assistants serving in a reference capacity in the University Library System. The researcher obtained a purposive sample from this group of both new and more seasoned librarians, including graduate assistants. The pre-test assessed both participant demographics as well as how much training (and the type of training) the sample group has already been exposed to in advance of the expert instruction session.

The pre-test consists of typical demographic questions about age, years working in the library and education level, as well as questions about whether the participant has had any previous copyright training. The pre-test asked participants to disclose how much training (and the type of training) the participant had already been exposed to in advance of the expert instruction session. The pre-test also asked the participant to rate a response to the following: “I am confident providing advice to library users regarding fair use” on a Likert scale. The pre-test also presented the participant with a hypothetical fair use scenario that might be encountered during a library reference meeting (Appendix E). The pre-test asked participants to analyze the fair use factors (listing the factors by name) and to determine whether the use in question in the end would likely be considered a fair use. The pre- and post-test hypothetical questions were developed by the researcher, while the rubric was developed by a group of subject experts on fair use. The pre- and post-test hypothetical questions were designed to permit test subjects to both utilize the four fair use factors as well as the transformative use test as developed by the courts.

The preface to the hypothetical asked participants to answer a hypothetical fair use scenario as they might respond to a library patron by assessing the fair use scenario and explaining the “analysis [they] would conduct with the user” including “the legal considerations . . . [and] the factual ones as well.” Orally, the researcher explained that, of course, librarians are not permitted to provide library patrons with legal advice and, in practice the participants would likely refer the patron to a library guide, fair use checklists, and other information. (Healey 1998). However, in order to assess their level of comprehension, participants were asked for the sake of this experiment to conduct the fair use analysis and assess whether the particular hypothetical use would constitute a fair use.

Next training was provided by a subject expert (Harvard Copyright Librarian Kyle Courtney) using the ACRL framework, specifically information has value, as a guide. (Multiple training sessions lasting three hours, including pre- and post-testing, were provided).

Then the participants were administered a post-test with a slightly different fair use hypothetical question. The participants were again asked to write out their analysis of the fair use factors and to make a determination regarding whether the use in question would likely be considered fair use. Finally, participants were asked how confident they now felt, after having had the training, to answer a library reference question about fair use and to explain their answer to the patron (on a similar scale to that provided above).

Approximately two weeks later a follow up questionnaire was sent to participants. In the follow up, the participants were asked whether, in the intervening time between the training and the questionnaire, they had the opportunity to answer a fair use question of any kind. If so, they were asked to describe the interaction and how they felt about it (whether they felt confident in answering the question or guiding the library patron to find information on fair use).

Note that the control group was comprised of librarians and graduate students who were unable to attend the expert training session. Thus, the control group took the pre- and post-test without the workshop in between and control group participants were not asked to participate in the follow up post-post-test questionnaire.

All hypothetical qualitative testing results were randomly sorted with no participant identifying information and was scored by the primary investigator using an expert-developed rubric (“a document” articulating the “expectations for the assignment” using a list of criteria and ranking of how the participant met the expectations ranging from poor to excellent). (Reddy & Andrade, 2010).

The rubric was developed using a panel of copyright experts and communicating through a shared google document online. The group of experts was not anonymous, nor was the discussion constrained in the manner normally associated with a Delphi study, but the open conversation allowed for the subject experts to reflect on each other’s guidance regarding the developing rubric. The development was an iterative process, with various versions being produced to incorporate feedback informed by the expert contributions. Typically, the language used in the rubric is the most challenging part of designing a scoring rubric. (Reddy & Andrade, 2010). Thus, working with a group of subject experts to form a consensus provides an evaluative validity to the phrasing utilized in the rubric. (Ibid.). This approach can be categorized as an expert panel process to build a consensus of expert opinions.

The copyright librarian experts were identified by consulting a list of copyright specialists in academic libraries. The individuals who volunteered to collaborate on the project consisted of Brandon Butler, Kyle Courtney, Ana Enriquez, and myself, Sara Benson. All four experts have law school level teaching experience and are very familiar, therefore, with writing

and scoring law school student responses and examinations. Additionally, all of the experts currently focus on copyright legal issues in their professional library careers.

Prior to recruiting experts to assist with the development of the assessment measure, the appropriate instrument needed to be selected. Rubrics are favored as a measure of comprehension because they measure “higher order thinking skills rather than simply measuring an acquisition of facts.” (Gola, Ke, Creelman, & Vaillancourt, 2014) For similar reasons, law professors, particularly in the area of legal writing and analysis, have been using rubrics to score law student proficiency at legal writing for years. (Rose, 2011). Specifically, the use of rubrics to score legal writing “can result in grading that is more efficient and more consistent, particularly after a professor has gained some experience using them.” (Ibid.)

The author created the original framework for the rubric and distributed to the group of experts using Google Documents. The rubric was created in advance of creation of the pre- and post-test questions about fair use, although the goal was to create two similarly challenging fact based hypotheticals of the sort one might find in a law school examination. The rationale for this kind of examination question is to model a question that a reference librarian, factually, might receive from a patron regarding fair use. The rubric, then, would be utilized by the investigator to assess understanding of fair use principles as demonstrated in a written answer to the hypothetical question(s).

Originally, the proposed rubric contained five categories of possible response performance levels, ranging from one to five and from low comprehension to high comprehension, respectively. Ultimately, the rubric was simplified to four categories to prevent the scorer from defaulting to a mid-range score (a three out of five). With only four categories,

the investigator must choose whether a mid-level answer should receive a score of a two or a four, which will yield more nuanced results (Oakleaf, 2009).

The experts collaborated via Google Documents regarding the appropriate performance descriptors in each category of comprehension. Initial comments were focused on the type of learning the rubric was meant to measure. The initial language seemed to suggest that there was one correct answer to the test question. For instance, a category one response might be categorized as “comes to an indefensible or the wrong conclusion regarding fair use.” The experts quickly agreed that the test question should be worded to allow for multiple interpretations and not such an obvious result, as many fair use questions in reality are not so obvious and could be interpreted in various reasonable ways.

Then, comments focused on the depth of the descriptors contained in each category within the rubric. Experts suggested that the more detailed the descriptors, the more likely the investigator would be to score test instruments on a consistent basis. Language was added in each category to provide more depth of analysis and variation between the categories in terms of depth of understanding. For instance, while a level one answer might “fail[] to identify statutory fair use factors” a level two answer might “list[] all statutory fair use factors” while a level three answer would not only list the factors, but also “associate[] each factor with established criteria” and a level four answer would additionally “understand[] how the factors relate to one-another, and emphasize[] how a transformative use would relate to each factor.”

The rubric allowed me to rank pre- and post-test answers to the hypotheticals from 0 to 4 with 0 being a non-answer such as “I don’t know,” 1 being a very shallow understanding of fair use, and 4 being the most complete understanding of fair use.



Note that where results meet a T-test for statistical significance ( $\alpha = 0.05$ ), those findings may be noted, but the population sample was not random.

## **RESULTS**

The total number of participants in the survey data was fifty-five. The total number of participants in the pre-test, fair use training and post-test was thirty-nine. The number of participants in the control group, who only completed pre- and post-testing with no training provided was sixteen. Out of the thirty-nine participants in the pre- and post-testing along with the training, thirty-eight continued to participate in the post-post testing two weeks later.

### **Experimental Group Demographic Data**

87.2% of the thirty-nine participants in the pre- and post-testing, as well as the fair use training were female while only 12.8% were male. In terms of race, twenty-nine of the participants are Caucasian, one is African-American, one is Asian, two are Latino, and six are multi-racial. The number of participants thirty and younger was sixteen. The age range from thirty-one to forty included six participants. The age range from forty-one to fifty included eight participants and there are seven participants over fifty-one years of age. Two participants chose not to disclose their age. Thirteen participants are graduate assistants working in the library (likely appointed through the school of information sciences). Nine are academic professionals, five assistant professors, five associate professors, and one full professor and 6 designated their position as “other.” In terms of the amount of time the individuals had worked at the library, the number of participants who had been working at the library for one year or less was 10. Another 10 had worked at the library between one and three years. Another seven individuals had worked at the library up to five years. Another six up to fifteen years and four individuals had worked at the library for over fifteen years. Two individuals chose not to answer this question.

Participants were asked whether they had received “formal” training in copyright law before the workshop and how much and whether they had received such training in fair use specifically prior to the workshop. Table 1 indicates their responses to this question.

Table 1: Summary of Prior Training

| Copyright Law Training | Fair Use Training | Fair Use Only | Copyright Law Only | Both          | Neither       |
|------------------------|-------------------|---------------|--------------------|---------------|---------------|
| <i>n</i> = 38          | <i>n</i> = 39     | <i>n</i> = 38 | <i>n</i> = 38      | <i>n</i> = 38 | <i>n</i> = 39 |
| 14 (36.2%)             | 17 (43.6%)        | 5 (13.2%)     | 2 (5.3%)           | 12 (31.6%)    | 19 (50%)      |

Interpreting this data is difficult because it seems a bit unorthodox to receive copyright law training with no mention of fair use, but it could occur, such as a training focused on the library exceptions to copyright provided in Section 108 of the Copyright Act. Similarly, a training focused only on fair use would be understandable in the context of fair use week events. While there was a more open ended question asking about a description of the training provided, the responses varied greatly in the level of detail provided. As such, it is hard to make conclusions based on this portion of the data, other than to suggest that approximately half of the participants did have some prior knowledge of copyright law and/or fair use before the expert training provided during the workshop, while the other half did not.

Participants were asked to list the name or type of course providing them with previous information about copyright law, with the opportunity to select a box indicating whether fair use was a component of the training. One respondent specifically mentioned a required course from the iSchool at the University of Illinois, called Libraries, Information and Society (LIS 502), which includes a brief copyright component. Others listed courses such as: Introduction to Intellectual Property (one participant), Copyright for Information Professionals/Librarians (two

participants), Copyright and Contracts (one participant), Music Copyright (two participants), a project for a general library information course (one participant), Copyright and Institutional Sound Recordings (one participant). Three participants listed library workshops and one participant could not remember where they had received prior training. Almost all of these prior trainings contained a fair use component—only two out of twenty-three did not.

Seventeen participants indicated that they answer a question related to fair use in the library one to two times per week, while twenty-two individuals responded that they never answer such questions as part of their role in the library.

### **Confidence Levels Pre- and Post-Training**

The participants who took the fair use training were asked for their confidence levels both in the pre-test and the post-test. In the pre-test, participants were asked to rate:

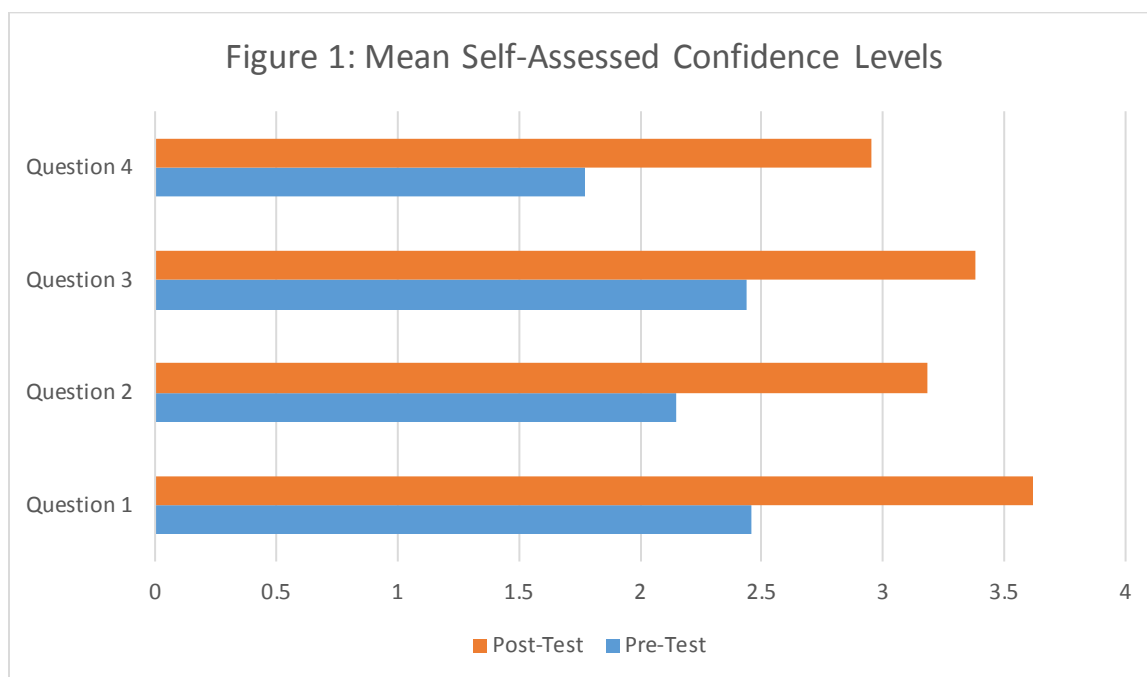
- Question 1: “Currently, how much do you know about fair use copyright law?”
- Question 2: “Currently, how well are you able to explain fair use copyright law to a colleague?”
- Question 3: “If a patron asked you a fair use copyright question, how confident are you that you could assist the patron?”
- Question 4: “How much help would you be able to give to a patron who has a difficult question about fair use copyright law?”

The participants were again asked the same questions about their confidence levels in the post-test after having received the three hour fair use training session from a copyright expert.

Figure 1 compares the mean confidence level for each of the four questions. Regarding the first question, how much they currently know about fair use copyright law, the confidence levels begin to rise. A similar gain in confidence is indicated by the answers to the second question about how well they could explain fair use copyright law to a colleague. Next, the responses to

the question of confidence in assisting a patron with a fair use copyright question indicates a rise in the level of confidence post-training as well. Finally, when asked whether they could assist a patron with a difficult fair use copyright question, confidence levels continued the upward trend.

The gap in results is significant for each of the four levels of confidence measured on a t-test scale and is best viewed visually. The below side-by-side charts indicate the mean level of pre- and post-training confidence levels from each measurement indicator.



The gap in levels can also be demonstrated through the Tables two through five, which include comparisons of the Likert Scale Responses to the Pre- and Post-Test Confidence Questions:

Table 2: Likert Scale Responses to Pre- and Post-Test Confidence Question 1  
*Question 1: "Currently, how much do you know about fair use copyright law?"*

| Level     | Nothing at all | A little | A moderate amount | A lot      | A great deal |
|-----------|----------------|----------|-------------------|------------|--------------|
| Pre-test  | (1) 2.6%       | (23) 59% | (11) 28.2%        | (4) 10.3%  | 0            |
| Post-test | 0              | (2) 5.1% | (13) 33.3%        | (22) 56.4% | (2) 5.1%     |

Table 3: Likert Scale Responses to Pre- and Post-Test Confidence Question 2

*Question 2: “Currently, how well are you able to explain fair use copyright law to a colleague?”*

| Level     | Not well at all | Slightly well | Moderately well | Very well  | Extremely well |
|-----------|-----------------|---------------|-----------------|------------|----------------|
| Pre-test  | (9) 23.1%       | (17) 43.6%    | (11) 28.2%      | (2) 5.1%   | 0              |
| Post-test | 0               | (6) 15.4%     | (20) 51.3%      | (13) 33.5% | 0              |

Table 4: Likert Scale Responses to Pre- and Post-Test Confidence Question 3

*Question 3: “If a patron asked you a fair use copyright question, how confident are you that you could assist the patron?”*

| Level     | Not confident at all | Slightly confident | Somewhat confident | Very confident | Extremely confident |
|-----------|----------------------|--------------------|--------------------|----------------|---------------------|
| Pre-test  | (7) 17.9%            | (14) 33.3%         | (13) 35.9%         | (4) 12.8%      | 0                   |
| Post-test | 0                    | (3) 7.7%           | (19) 48.7%         | (16) 41%       | (1) 2.6%            |

Table 5: Likert Scale Responses to Pre- and Post-Test Confidence Question 4

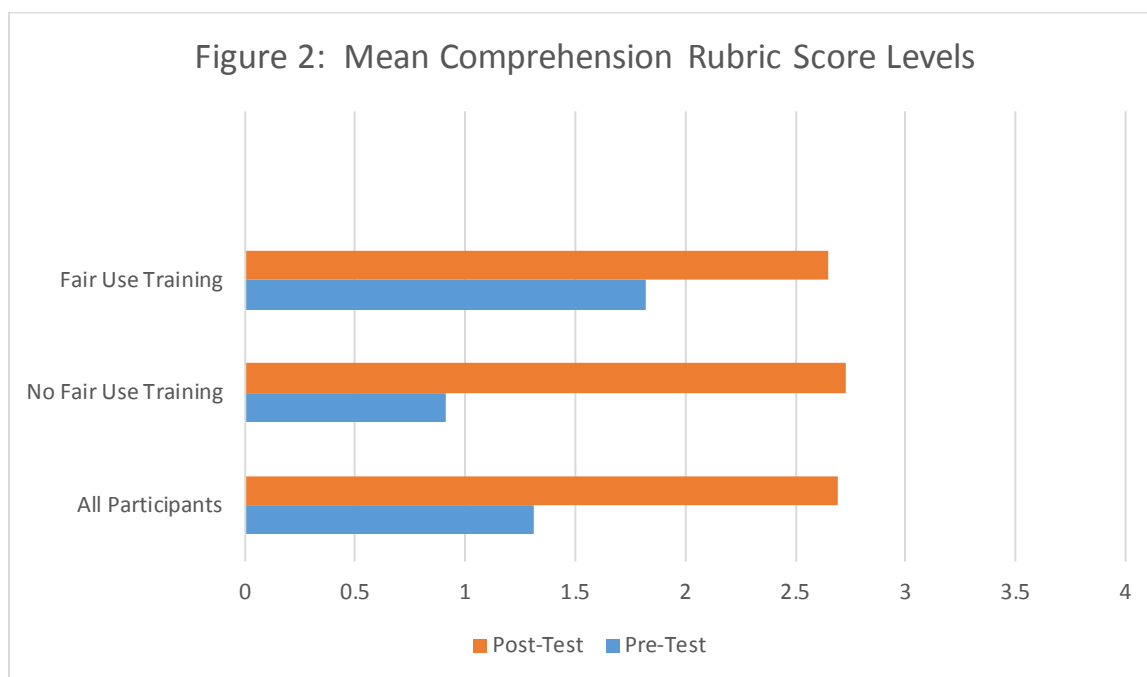
*Question 4: “How much help would you be able to give to a patron who has a difficult question about fair use copyright law?”*

| Level     | None at all | A little   | A moderate amount | A lot     | A great deal |
|-----------|-------------|------------|-------------------|-----------|--------------|
| Pre-test  | (14) 35.9%  | (21) 53.8% | (3) 7.7%          | (1) 2.6%  | 0            |
| Post-test | 0           | (9) 23.1%  | (23) 59%          | (7) 18.9% | 0            |

### Comprehension Levels Pre- and Post-Training

The mean scores from the rubric for the pre- and post-test were statistically significant as well. The principal investigator scored each pre- and post-test hypothetical answer against the expert developed rubric on a scale of zero to 4. A sample of the scoring is available in Appendix J. The results of the mean scores of the pre-test (before the training) were 1.31 out of 4. After the participants had been provided with training, the result increased to a mean score of 2.69 out of 4.

The score difference pre- and post-test was slightly more pronounced for individuals who had never before received formal copyright fair use training. Those individuals had an increase in their rubric score from 1.82, while those who had availed of some previous training had an increase in scores of just 0.83. Interestingly, the increase in confidence levels of those who had no training before was greater than those who had been provided with training before, too. The below Figure 2 demonstrates these differences in comprehension visually.



### Control Group Demographics and Results

There were a total of sixteen participants in the control group. 56.3% of the participants in the control group were female, while 31.3% were male. The age group of the control group ranged from twenty-seven to sixty-nine with two respondents thirty and under, three respondents between thirty-one and forty, three respondents between forty-one and fifty, and the remaining five respondents over fifty-one. The group included 6.3% of participants whose highest level of completed education was a four-year college degree, 68.8% had a master's level degree, and

18.8% had a doctorate level degree. 75% of the respondents were white, while 12.5% were other and 6.3% chose not to specify. 25% of respondents identified as academic professionals, 31.3% as assistant professors, 18.8% as associate professors, and 12.5% as full professors. In terms of length of years working for the library, two individuals chose not to answer, and the remaining individuals with five or less years of service totaled 43.9%, six to ten years totaled 12.5%, eleven to twenty years totaled 12.6% and more than twenty years totaled 18.9%.

The control group confidence levels and comprehension levels (as measured by the scores they received on the pre- and post-test hypothetical answers) did not indicate a significant change. Regarding the confidence levels pre- and post-test, with no training provided in the interim to the control group participants, for Question number 1, the pre-test mean was 2.63 with the post-test mean at 2.53. For Question number 2, the pre-test mean was 2.50 and the post-test was 2.44. For Question number 3, the pre-test mean was 2.56 and the post-test mean was 2.44. For Question number 4, the pre-test mean was 1.88 and the post-test mean was the exact same at 1.88. Going through the experience of answering the hypothetical questions seems to have made individuals more likely to slightly change their answers to a lower level, but not to a statistically significant margin.

Regarding the comprehension levels based on the scoring of the hypothetical answers, the mean pre-test score was 1.44 and the mean post-test score was 2.00, which is not statistically significant at  $t = -1.95$ .

The results do not indicate that the confidence or comprehension of the control group participants increased between the pre- and post-test with no training provided. This indicates: (1) the confidence level measurements for the experimental group are likely reflect a correlation to the training provided, as the control group did not have a confidence level change with no



training; and (2) the pre- and post-test hypotheticals approximate the same level of challenge for participants, as those with no training received roughly the same rubric score on both the pre- and post-tests.

### **Post-Post Test Results**

Only one participant from the earlier testing did not complete the post-post testing that occurred two weeks after the initial training, thus, the response rate was very high with 38 responses. The post-post-test asked a shorter series of questions, mainly about their confidence levels at that time, their feedback about the training, and whether they had the opportunity to use the training in practice.

Specifically, participants were asked whether, “since the training in fair use copyright law” . . . “have you had an opportunity to answer a patron’s question about fair use copyright, or have you not had such an opportunity?” Only three participants indicated that they had had such an opportunity, while thirty-five indicated that they had not. However, those three did indicate, when answering the next question about how helpful the training was to aid them in answering a fair use question that it was “very helpful.” More participants, twelve, had an opportunity to use the training in some other way in their work, while twenty-six did not.

Some of the most valuable information obtained from this portion of the testing were the open ended qualitative responses to the question “please describe how you were able to use the information from the fair use training in your work in any way (i.e., if you were able to answer a patron question, please indicate what the question was and how you were able to help the patron.” Thirteen participants provided written responses to this question, further elaborating regarding how the training was able to help them in their work as librarians.

While six participants had more general responses, such as that they could “tell people” about fair use, “spread information,” or utilize the information in “discussions about open access and fake news” or the “creative commons,” many had more specific uses to recount. For instance, three participants were able to directly apply the knowledge they learned about fair use in the training to develop a scholarly presentation or library exhibit. Two participants noted that they used the information provided in the training to help guide content in a “publishing workshop.” Two participants recalled specific instances on the information desk where they were able to assist a library patron as a result of the fair use training.

## DISCUSSION

The sampling in this study was a purposive grouping, therefore, the results from the study are not generalizable. Despite that limitation, the findings are encouraging for copyright educators and librarians alike. Often, librarians harbor feelings that copyright and fair use, in particular, are too difficult for them to engage with and, therefore, may avoid discussing the topic with patrons at all. (Morrison & Secker, 2017). Indeed, quite frequently, librarians have not been trained in their professional library and information study programs about copyright and fair use sufficiently, and could use additional training. (Estell & Saunders, 2016).

The welcome news from the results of this study indicate that librarians feel more confident about their ability to address fair use questions after a fair use training session and that they are better able to answer a hypothetical fair use question after the training as well. Unsurprisingly, the findings also indicate a higher jump in comprehension of fair use (as demonstrated by a more thorough answer to a fair use hypothetical question post-training) gained from the training when librarians had not engaged in fair use training in the past. Additionally, in the two weeks after the training session, some study participants even had the opportunity to apply the knowledge that they learned during the session.

While this study is limited to a particular type of fair use training (that offered by Kyle Courtney from Harvard through the Copyright First Responders program) and to a limited number of study participants, the results are promising. The results demonstrate an increase in self-assessed confidence about the ability to answer fair use questions and an increased ability to answer a fair use hypothetical question when scored based on an expert created rubric. These findings indicate, thus, that library and information science programs should offer more training in fair use to students to increase comprehension of the issues relating to fair use and increase

confidence in assisting in resolving issues related to fair use. Most importantly, it indicates that fair use, while complicated, is not impossible and that librarians are willing and able to engage with fair use issues when provided with adequate training and institutional support.

An area for further exploration is whether a similar jump in confidence and knowledge would occur after a training based on Section 108 of the Copyright Act—those provisions governing preservation, digitization, and inter-library loan of materials. Section 108 is an area of copyright law that librarians, especially in the area of archives, preservation, and digitization, employ almost daily and it would be interesting to develop a similar set of questions and a rubric for a Section 108 library training session.

## CONCLUSION

Although many librarians are loath to engage with fair use legal issues as they are viewed as complex and, perhaps even, risky (Morrison & Secker, 2017), the results of this study provide some evidence to illustrate that fair use principles are accessible to librarians when provided with meaningful training opportunities. As a profession, going forward, libraries should encourage their librarians to pursue professional development opportunities such as webinars and on-site workshops to engage with fair use principles. Indeed, given the protections in the Copyright Act for good faith copyright determinations, librarians should be less afraid to employ fair use principles in their daily work as well. Hopefully, other institutions will be inspired and motivated to provide additional training to library faculty and staff to encourage them to engage with fair use in their daily work. Although fair use law is flexible, it is not impossible, and the more librarians engage with fair use cases and legal precedent, the more they will become comfortable with making fair use assessments in their daily work.

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## APPENDIX A: IRB APPROVAL

### Consent Form

Dear Participant,

Thank you for your interest in participating in this research being conducted by Sara Benson of the University Library at the University of Illinois. If you agree to participate in this research, you will help us to better understand how a fair use training can impact librarian competence in answering user questions about fair use.

Participation will involve a pre-test of approximately twenty minutes in length including some demographic questions, a one hour twenty minute training session, and a post-test of approximately fifteen minutes in length. During the pre- and post-test you will be asked to answer a hypothetical question about fair use. All answers will remain private and confidential. There are no risks involved in participating in this research other than those involved in ordinary everyday life. Participation is entirely voluntary.

Approximately two weeks after the initial testing and training, you will receive a questionnaire to fill out online. Once you have completed all parts of the study, including filling out the questionnaire, you will receive the \$20 gift card as a thank you for your time in participating in the study.

Print and retain a copy of this consent form for your records. If you have any questions/comments about this study or are interested in the results, please direct your inquiry to Sara Benson at [srbenson@illinois.edu](mailto:srbenson@illinois.edu). The results of this study will be used as part of a published article. If you feel you have not been treated according to the descriptions in this form, or if you have any questions about your rights as a research subject, including questions, concerns, complaints, or to offer input, you may call the Office for the Protection of Research Subjects (OPRS) at 217-333-2670 or e-mail OPRS at [irb@illinois.edu](mailto:irb@illinois.edu)

When this research is discussed or published, no one will know that you were in the study. However, laws and university rules might require us to disclose information about you. For example, if required by laws or University Policy, study information which identifies you and the consent form signed by you may be seen or copied by the following people or groups: a) The university committee and office that reviews and approves research studies, the Institutional Review Board (IRB) and Office for Protection of Research Subjects; and b) University and state auditors, and Departments of the university responsible for oversight of research

By signing below, you verify that you have read and understood the above consent form and voluntarily agree to participate in this study.

Sincerely,

**Sara R. Benson, LLM, JD**

*Copyright Librarian*

*Assistant Professor*

Signed: \_\_\_\_\_  
Printed name: \_\_\_\_\_

Date: \_\_\_\_\_

**University of Illinois at Urbana-Champaign  
Institutional Review Board**

Approved: 10-12-2016  
IRB #: 1720



## APPENDIX B: RECRUITMENT E-MAIL LETTER

### Consent Form

Dear Participant,

Thank you for your interest in participating in this research being conducted by Sara Benson of the University Library at the University of Illinois. If you agree to participate in this research, you will help us to better understand how a fair use training can impact librarian comprehension in answering user questions about fair use.

Participation will involve a pre-test of approximately twenty minutes in length including some demographic questions, a one hour twenty minute training session, and a post-test of approximately fifteen minutes in length. During the pre- and post-test you will be asked to answer a hypothetical question about fair use. All answers will remain private and confidential. There are no risks involved in participating in this research other than those involved in ordinary everyday life. Participation is entirely voluntary.

Approximately two weeks after the initial testing and training, you will receive a questionnaire to fill out online.

Print and retain a copy of this consent form for your records. If you have any questions/comments about this study or are interested in the results, please direct your inquiry to Sara Benson at [srbenson\(a\).illinois.edu](mailto:srbenson(a).illinois.edu). The results of this study will be used as part of a published article. If you feel you have not been treated according to the descriptions in this form, or if you have any questions about your rights as a research subject, including questions, concerns, complaints, or to offer input, you may call the Office for the Protection of Research Subjects (OPRS) at 217-333-2670 or e-mail OPRS at [irb@illinois.edu](mailto:irb@illinois.edu)

When this research is discussed or published, no one will know that you were in the study. However, laws and university rules might require us to disclose information about you. For example, if required by laws or University Policy, study information which identifies you and the consent form signed by you may be seen or copied by the following people or groups: a) The university committee and office that reviews and approves research studies, the Institutional Review Board (IRB) and Office for Protection of Research Subjects; and b) University and state auditors, and Departments of the university responsible for oversight of research

By signing below, you verify that you have read and understood the above consent form and voluntarily agree to participate in this study.

Sincerely,

**Sara R. Benson, LLM, JD** *Copyright Librarian Assistant Professor*

Signed: Printed name: -----

Date: -----

## APPENDIX C: CONTROL GROUP E-MAIL LETTER

Thank you so much for volunteering to help with my thesis project, even though you can't attend the training session. Please follow the link below to engage in the survey. It should take 30-40 minutes, so make sure you have the time set aside to do it thoroughly.

Please also sign the attached consent form and send it to me via email so that I can keep it on file. Do not tell me your participant number with the email.

Finally, please do not talk with others about the content of the survey, as they have yet to participate in the study.

Again, thank you so much for your help!

Sara

Sara R. Benson, LL.M., J.D.  
Copyright Librarian  
Assistant Professor

Scholarly Communications & Publishing Unit  
Assistant Professor, University Library  
1408 West Gregory Drive  
Urbana, Illinois 61801 USA  
(217) 333-4200  
email srbenson@illinois.edu

## APPENDIX D: POST-POST TEST E-MAIL LETTER

Subject heading: Fair Use Post-Testing

Dear {FirstName},

Thank you so much for volunteering to help with my thesis project. Please follow the link below to engage in the survey. It should take only 10-15 minutes and you do not need to remember a password to take this part of the survey (thankfully!)

**Follow this link to the Survey:**

Thank you so much for your help!

Sara

*Sara R. Benson, LLM, JD*  
*Copyright Librarian*  
*Assistant Professor*

## APPENDIX E: DEMOGRAPHIC AND CONFIDENCE LEVEL SURVEY QUESTIONS

Q1 Before you attended this session, did you ever receive any formal instruction in copyright law, or did you not?

- ☐ Received formal instruction in copyright law (1)
- ☐ Never received formal instruction in copyright law (2)

Q2 Fair use is a limitation on copyright law that allows someone to use a work that is currently protected by copyright without author permission.

Before you attended this session, did you ever receive any formal instruction in fair use copyright law, or did you not?

- ☐ Received formal instruction in fair use (1)
- ☐ Never received formal instruction in fair use (2)

Q3 You indicated that you have received formal instruction in copyright law before attending this session.

Below, please describe each formal instruction session in copyright law in terms of:

|                         | Please provide                             | How long was this session? <i>You can answer in terms of number of minutes OR number of days.</i> |                    | Did it include any instruction on fair use, or did it not? |                                       | If fair use instruction was included, how long was the fair use instruction session? <i>Please provide your best estimate in terms of number of minutes.</i> |
|-------------------------|--|---|--------------------|--|---------------------------------------|--|
|                         | title of training or brief description (1) | Number of minutes (1)   | Number of days (2) | Did include fair use training (1)                          | Did not include fair use training (2) | Minutes of fair use training included (1)  |
| Training session #1 (1) |  |   |                    | o  | o                                     |  |
| Training session #2 (2) |  |   |                    | o  | o                                     |  |
| Training session #3 (3) |  |   |                    | o  | o                                     |  |
| Training session #4 (4) |  |   |                    | o  | o                                     |  |
| Training session #5 (5) |  |   |                    | o  | o                                     |  |
| Training session #6 (6) |  |   |                    | o  | o                                     |  |

Q4 Currently, how much would you say you know about fair use copyright law?

- ☐ A great deal (1)
- ☐ A lot (2)
- ☐ A moderate amount (3)
- ☐ A little (4)
- ☐ Nothing at all (5)

Q5 As part of your work at the library, in a typical week how many times do you answer questions related to fair use copyright law?

- ☐ Five times or more (4)
- ☐ Three to four times (3)
- ☐ One to two times (2)
- ☐ Never (1)

Q6 If a patron asked you a question about fair use copyright law at this time, how confident are you that you could assist the patron?

- ☐ Extremely confident (1)
- ☐ Very confident (2)
- ☐ Somewhat confident (3)
- ☐ Slightly confident (4)
- ☐ Not confident at all (5)

Q7 How much help would you be able to give a patron who has a difficult question about fair use copyright law?

- ☐ A great deal (1)
- ☐ A lot (2)
- ☐ A moderate amount (3)
- ☐ A little (4)
- ☐ None at all (5)

Q8 Currently, how well are you able to explain fair use copy right law to a colleague?

- ☐ Extremely well (1)
- ☐ Very well (2)
- ☐ Moderately well (3)
- ☐ Slightly well (4)
- ☐ Not well at all (5)

Q9 What is your year of birth?

Q10 What is your sex?

- ☐ Male (1)
- ☐ Female (2)

Q11 What is the highest level of school you have completed or the highest degree you have received?

- ☐ Less than high school degree (1)
- ☐ High school graduate (high school diploma or equivalent including GED) (2)
- ☐ Some college but no degree (3)
- ☐ Associate degree in college (2-year) (4)

- ☐ Bachelor's degree in college (4-year) (5)
- ☐ Master's degree (6)
- ☐ Doctoral degree (7)
- ☐ Professional degree (JD, MD) (8)

Q12 Are you Spanish, Hispanic, Latina/Latino, or none of these?

- ☐ Spanish, Hispanic, or Latina/Latino (1)
- ☐ None of these (2)

Q13 What is your race? Indicate one or more races that you consider yourself to be.

- ☐ White (1)
- ☐ Black or African American (2)
- ☐ American Indian or Alaska Native (3)
- ☐ Asian (4)
- ☐ Native Hawaiian or Pacific Islander (5)
- ☐ Other (6) \_\_\_\_\_

Q14 Which of the following best describes your current job or position title at the University of Illinois Library?

- ☐ Graduate Assistant (1)
- ☐ Academic Professional (2)
- ☐ Administration (3)
- ☐ Assistant Professor (4)



☐ Associate Professor (5)

☐ Full Professor (6)

☐ Other--Please specify (7) \_\_\_\_\_

Q15 How many years have you worked for the University Library?

☐ Number of years \_\_\_\_\_

## APPENDIX F: PRE-TEST FAIR USE HYPOTHETICAL

Please answer the question below by writing your response in full sentences to the best of your ability. Please do not look at any materials when answering this question.

A library user approaches you at the library information desk. The library user is holding a book published in the United States in 1992 containing numerous images (approximately one hundred images on approximately half of the pages of the book) from a famous artist (all under US Copyright protection). The user asks whether it would be permissible for her to make a scan of about one-third of the images to use in an academic blog post about art history. In the post, the art historian plans to shrink the size of the images, analyze the images one by one and provide commentary about the meaning of the images related to the 1990s period in American art. The user discloses that she does receive some money from the blog in the form of marketing revenue from advertising. What kind of analysis would you conduct with the user? Please be specific and include in your analysis not only the legal considerations, but the factual ones as well.

## APPENDIX G: POST-TEST FAIR USE HYPOTHETICAL

Please answer the question below by writing your response in full sentences to the best of your ability. Please do not look at any materials when answering this question.

A library user approaches you at the library information desk. The library user has a stack of books published by J.K. Rowling in the Harry Potter Series (all under US Copyright protection). The user tells you that she has designed a technology that “reads” scans of book chapters and creates a text map demonstrating the story arc in a picture. The ultimate output of the story arc is a beautiful shape of dots on paper, with the color of the dots representing different actions that occur in the book (for instance, a red dot means someone has died, a blue dot means a loving relationship has been formed, etc.). The user plans to scan the entire series of Harry Potter and put each book through the technology to create text maps of the plot and then put each plot map into a book to sell through a publishing company. The user asks, is this considered fair use? What kind of analysis would you conduct with the user? Please be specific and include in your analysis not only the legal considerations, but the factual ones as well.

## APPENDIX H: POST-POST TEST SURVEY

Q1 Since the training in fair use copyright law that you received in April from Kyle Courtney, have you had an opportunity to answer a patron's question about fair use copyright, or have you not had such an opportunity?

☐ Have had (1)

☐ Have not had (0)

Q2 Please describe how you were able to use the information from the fair use training in your work in any way, (i.e., if you were able to answer a patron question, please indicate what the question was and how you were able to help the patron).

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Q3 How helpful was the training to you when answering the fair use copyright question?

- ☐ Not helpful at all (1)
- ☐ Somewhat helpful (2)
- ☐ Moderately helpful (3)
- ☐ Very helpful (4)
- ☐ Extremely helpful (5)

Q4 Would you recommend the Kyle Courtney fair use copyright training to others?

- ☐ Would recommend (1)
- ☐ Might recommend (2)
- ☐ Would not recommend (3)

Q5 Please indicate why you would recommend the Kyle Courtney fair use copyright training to others.

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Q6 Since the training in fair use copyright law that you received in April from Kyle Courtney, have you had an opportunity to use the information in any other way in your work, or have you not had such an opportunity?

- ☐ Have had (1)
- ☐ Have not had (0)

## APPENDIX I: RUBRIC

Ranked from low to high comprehension of fair use

| 0-1 Low   | 2  | 3   | 4 High   |
|---|--|---|--|
| <p>Fails to identify statutory fair use factors.</p> <p>Fails to understand that four fair use factors are weighed/balanced, and not an absolute measure for each factor.</p> <p>Fails to apply each of the relevant fair use factors.</p> <p>Fails to demonstrate an understanding of application of each fair use factor to facts of hypothetical.</p> <p>Comes to the indefensible conclusion regarding fair use, or fails to come to a conclusion regarding fair use.</p> | <p>Lists all statutory fair use factors.</p> <p>Show basic understanding of fair use factors, and utilizes some, but not all, of the relevant facts in the analysis.</p> <p>Comes to indefensible conclusion regarding fair use or fails to justify ultimate conclusion on fair use using factors.</p> | <p>Lists all statutory fair use factors and associates each factor with established criteria.</p> <p>Shows basic understanding of fair use factors, and utilizes facts for the factors, but may misapply facts at times.</p> <p>Comes to indefensible conclusion regarding fair use or does not adequately demonstrate how the author came to the ultimate conclusion regarding fair use.</p> | <p>Lists all statutory fair use factors, associates with established criteria, and understands how the factors relate to one-another, and emphasizes how a transformative use would relate to each factor.</p> <p>Shows superior understanding of fair use factors, and how the facts relate to each fair use factor.</p> <p>Considers other plausible factors not within the statute, but supported through salient case law and/or best practices, including the concept of “transformative” use.</p> <p>Comes to defensible conclusion regarding fair use and author can justify that conclusion using factors and facts.</p> |

## APPENDIX J: SAMPLE HYPOTHETICAL ANSWERS

- 0: “I don’t know.”
- 1: “I believe the analysis would need to start with the portion/extent of the work that would be duplicated. I don't think that the fact that the user is paid by the blog makes a difference, though I could be wrong. I think it would help that she is analyzing [sic] the pictures rather than duplicating the same purpose for which they were originally published.”
- 2: “I would first let her know that there are copyright/fair use librarians for consulting such issues. [redacted] I would tell her that her text analysis project should be consider as fair use. I would caution her about how she i going to do "after" the project - because sharing all books in its entirety would be copyright violation.”
- 3: “I would tell her that the amount (1/3) is nowhere in copyright law, so we must analyze the legality in other ways. This is for education purposes, which is a greater indication of fair use. However, the fact that she receives money means it is not non-profit [sic]. Another consideration is that she is altering the images, and therefore they are not exact copies. Finally, I would tell the professor that technically, something cannot be known to be fair use unless she gets sued and a judge rules it.”
- 4: “The images are decidedly under copyright, so that initial piece of analysis is established. Without reviewing Title 17, there does not seem to be an immediately obvious exception apart from Fair Use. The use of the work is clearly within the definition of transformative, as it is being used for scholarship and analysis. Without reading the text of the book, it at least sounds as if the original text is about the artist, and not about the primary subject of the place of the artist within 1990s American Art-- and a writing in 2017 would obviously have a different means of framing those issues. The use of the book and images is clearly a means of establishing factual artifacts, rather than appropriation for a similar creative use as the originals. Amount and substantiality remains an elusive thing to codify or measure, and 30 out of 100 images is rather a lot. However, it is not a complete reproduction of the images in the book. The advertising revenue does not in and of itself negate the other considerations [sic], though it does seem to offer a weakish argument that the re-use is for profit. Even still, though, this does not seem like a consideration that should carry too much weight since fair use is not prohibited by profitability factors. As a librarian, I would [sic] recommend that the usage may well fall within the parameters of fair use. However, the artist or the current copyright holder for the artists' images may still contact the blog author about the images use, so she should either have a plan for addressing [sic] that, or seek more substantial legal advice before proceeding as to a best response if a challenge arises.”